

**ANNUAL REPORT
OF THE
ENVIRONMENTAL QUALITY SERVICE
COUNCIL**



**Indiana Legislative Services Agency
200 W. Washington Street, Suite 301
Indianapolis, Indiana 46204**

October, 2007

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2007

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**Bernadette Bartlett
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A copy of this report is available on the Internet. Reports, minutes, and notices are organized by committee. This report and other documents for this Committee can be accessed from the General Assembly Homepage at <http://www.in.gov/legislative/>.

I. STATUTORY AND LEGISLATIVE COUNCIL DIRECTIVES

The Environmental Quality Service Council (EQSC) is established by IC 13-13-7.

The Indiana General Assembly in P.L. 204-2007, SECTION 17 (SEA 154) directed the EQSC to study and make findings and recommendations concerning the following:

- (1) Shortening the environmental rulemaking process for rules adopted under IC 13 by considering the following:
 - (A) Other state and local agency rulemaking processes.
 - (B) Other state environmental rulemaking processes.
 - (C) Negotiated rulemaking.
 - (D) Steps and requirements of rulemaking.
 - (E) Professional boards and the relationship between boards and the office of environmental adjudication.
- (2) The goals, funding, markets, and structure of recycling in Indiana.

The Legislative Council also directed the EQSC to seek a report from the Indiana Department of Environmental Management (IDEM) regarding concentrated animal feeding operations and confined feeding operations (SR 52).

II. INTRODUCTION AND REASONS FOR STUDY

The activities of the EQSC in 2007 were conducted to discharge the EQSC's various responsibilities under P.L. 204-2007 and the Legislative Council resolution assigning topics to the EQSC.

III. SUMMARY OF WORK PROGRAM

The EQSC met five times on the following dates at the following locations to consider indicated topics.

August 16, 2007	Senate Chambers, Indiana Statehouse	IDEM Commissioner's report and use of credible science to inform the legislative process
September 14, 2007	Holiday Inn, Michigan City, Indiana	Great Lakes Compact
October 3, 2007	Senate Chambers, Indiana Statehouse	Environmental rulemaking, recycling
October 23, 2007	Senate Chambers, Indiana Statehouse	Solid waste management districts, storm water, electronic waste, confined feeding , environmental legal actions
October 30, 2007	House Chambers, Indiana Statehouse	State revolving funds, brownfields, anticipated legislation

IV. SUMMARY OF TESTIMONY

First Meeting - August 16, 2007

Commissioner's Report - Thomas Easterly, Commissioner of IDEM, presented the Commissioner's Report, which addressed the following: water quality standards; contaminant discharges into Lake Michigan; recycling grants; air pollution nonattainment designations; mercury switch recovery program procedures; confined feeding operations; electronic waste disposal programs; and IDEM's employee incentive program.

Scientific and Toxological Concepts - Dr. Daland Juberg, Dow AgroSciences LLC, presented a report concerning the use of credible science to inform the legislative process. He discussed the appropriate evaluation of a scientific study, the weight of evidence, putting science into human context, the importance of dose, evaluating causation, and understanding risk.

Second Meeting - September 14, 2007

Great Lakes - St. Lawrence River Basin Water Resources Compact (Compact) - Michael McCabe, Office Director, Council of State Governments, Midwestern Region, and David Naftzger, Executive Director, and Peter Johnson, Program Director, Council of Great Lakes Governors, presented a report on the Compact. The report addressed the following: economic, hydrological, geographical, and historical statistics concerning the Great Lakes basin; a comparison of compacts, treaties, and agreements; the Great Lakes Charter of 1985; the Water Resources Development Act of 1986; the characteristics of compacts; current Indiana compacts and Great Lakes agreements; Great Lakes basin water management goals; actions required for effectuation of the Compact; and assistance available.

Kari Evans, Policy Director, Office of Governor Mitch Daniels, presented a report on Indiana's plan for implementation of the Compact. The report addressed the following: ongoing activities for development of implementing legislation; outreach to legislative study committees; public meetings on the Compact; plans for introduction of a bill in the 2008 session of the General Assembly; and the key implementation issues.

Third Meeting - October 3, 2007

Environmental Rulemaking - Elizabeth DuSold, Eli Lilly and Company, presented a report on behalf of the Environmental Law Section of the Indiana State Bar Association. The report addressed the following: public participation and transparency in the rulemaking process; an overview of the process; the implementation of 2007 legislation that streamlines the process with respect to certain types of rules; sunset provisions; the results of a stakeholder survey; problems in generating appropriate fiscal analysis of proposed rules; potential environmental rulemaking board (ERB) conflicts of interest; and issues with the electronic publication of proposed rules.

Jack Ross, Executive Director, Indiana Legislative Services Agency, noted that he has met with representatives of the Indiana State Bar Association concerning environmental rulemaking issues, and that he anticipates dialogue seeking to resolve those issues.

Nancy King, attorney for IDEM, expressed her hope that the expedited rulemaking enacted in the 2007 session for rules that qualify under IC 13-14-9-8 might be expanded to other types of rules once input is received on the expedited process.

Dr. William Beranek, Indiana Environmental Institute, presented a report on behalf of an ad hoc group of interested parties. The report addressed the following: the basic soundness of the rulemaking structure; the inadequacy of cost analysis and cost-benefit analysis of proposed rules; the relatively low priority of rulemaking at IDEM; IDEM's staffing issues with respect to rulemaking; and the inadequacy of ERB's resources for making informed judgment about complex rules.

Janet McCabe, Improving Kids' Environment, presented a report to convey concerns and suggestions raised by environmental advocates. The report addressed the following: the basic soundness of the rulemaking structure; issues with fiscal analysis of proposed rules; the perception that the ERB's are heavily weighted in favor of regulated businesses and that public input has little effect; suggestions that ex officio ERB members should not vote, that more training of public ERB members be required, that the ERB's include more independent members, that ERB members' ethics requirements should be clarified, and that a technical secretary meeting certain criteria be appointed; the barriers to environmental advocacy groups' effective participation in the process; and suggestions to make the process more accessible.

Vince Griffin, Indiana State Chamber of Commerce, presented a report on behalf of the Chamber and the Indiana Manufacturers Association. The report expressed the view that no major changes are needed in the environmental rulemaking process, and emphasized the important elements of the process.

Sandra Flum, Director, Community Relations, Office of External Affairs, IDEM, presented a report describing the resources devoted by IDEM to environmental rulemaking and the difficulty in keeping the ERB's staffed with interested and educated people.

Glenn Pratt expressed his views that IDEM needs to seek comments from true experts and moderate voices representing all interests in the environmental rulemaking process, and that state agency appointees to ERB's should be ineligible to vote.

Recycling - Karen Firestone, Indiana Legislative Services Agency, presented a report that addressed the following: solid waste reduction goals; the solid waste management fee; the solid waste management fund and grants from the fund; accountability for grants; the Indiana recycling promotion and assistance fund and loans and grants from the fund; and the waste tire management fund.

Carey Hamilton, Legislative Liaison, Indiana Recycling Coalition, and Michelle Cohen, Executive Director, presented a report concerning recycling issues (Exhibit #7). The report addressed the following: the organization and mission of the Coalition; the definition of recycling; the solid waste management hierarchy; state recycling policy; the flow of materials and solid waste; recycling goals; the recycling collection structure; recycling markets; marketing opportunities; and state funding.

Lance Hodge presented a report on recycling from the perspective of Solid Waste Management Districts. He addressed the following: a statewide waste audit; the authority of local governments to direct waste streams to their own waste disposal facilities; disposal of cathode ray tubes in other states; efforts to encourage businesses to decrease their waste production; the use of electricity generated by waste-to-energy facilities; and the need to publicize recycling successes to spur additional participation in recycling programs.

David Lamm, Administrator, Boone County Solid Waste Management District, presented a report on recycling. He addressed various issues concerning the use of chipped tires in septic system fields.

Nelson Becker presented a report concerning recycling on behalf of the National Solid Waste Management Association. He noted that his members run recycling operations and emphasized that recycling is most successful when local communities are at the forefront of the effort. He believes that curbside recycling without sorting by the customer is more successful than drop off programs, but that there is necessarily a cost to the customer.

Miriam Dant and Douglas McGregor, Environmental Engineer, Steel Dynamics, Inc., presented a report concerning the company's project to compost nonhazardous steel mill waste material. The report addressed the following: identification of typical waste streams and those amenable to composting; pre-compost material preparation; the flow of the composting process; composting equipment and processing; meeting land application standards; and objectives and benefits.

Cindy Adams, Manager, Governmental Relations, Covanta, presented a report concerning the company's energy-from-waste (EFW) facilities. The report addressed the following: the solid waste management hierarchy; the magnitude of the solid waste stream and the part of the stream processed by EFW facilities; the electricity produced by the company's EFW facilities; EFW facilities as part of the global warming solution; production of methane by landfills; and the magnitude of the worldwide EFW facility industry.

Sandra Flum, Director, Community Relations, Office of External Affairs, IDEM, presented a report concerning recycling. She emphasized the importance of the availability of recycling opportunities for all citizens, especially to the extent that recycling operations are publicly funded. It is also important to consider whether recycling can be market driven, to develop recycling measurement in order to improve operations, and to examine inequities in recycling standards among various communities.

Fourth Meeting - October 23, 2007

Solid Waste Management - Karen Firestone, Indiana Legislative Services Agency, presented a report concerning solid waste management. The report addressed the organization of solid waste management districts, district plans, and district revenues, expenditures, and reserves.

Lance Hodge, Association of Indiana Solid Waste Management Districts, commented on measurement of recycling diversion, the role of solid waste management districts in addressing various environmental concerns, the frequency of audits of districts by the State Board of Accounts, and district budget surpluses.

Storm Water - Dr. Greg Lindsey, Associate Dean and Professor, School of Public and Environmental Affairs, addressed the means by which various states fund storm water operations and infrastructure. He noted that although property tax funding is steady, stable, and reliable, some states have adopted charges on property that are tied to the amount of impervious area on the property. He emphasized the importance of employing best practices in the establishment of financing, including the application of credits for overlapping payments and the availability of appeal and remonstrance procedures.

Stephen Murray presented a report from the storm water utility work group that examined whether duplicative fees are being assessed to ratepayers for storm water quality and quantity management among cities, towns, and counties. The report addressed the following: identification of two instances of duplication of fees; differences between storm water fees and regulated drain assessments; compliance with 327 IAC 15-13 concerning storm water run-off associated with municipal separate storm sewer system conveyances; and enforcement by political subdivisions of storm water permit compliance. The work group concluded that: duplication of fees is not a common problem; circumstances exist for duplication to occur; local governments should educate ratepayers regarding fees; duplication of fees should be addressed locally; and statutory changes are not recommended.

Confined feeding operations - Bruce Palin, Assistant Commissioner, Office of Land Quality, IDEM, presented a report concerning confined feeding operations pursuant to 2007 Senate Resolution 72. The report addressed the following organizational improvements: reassignment of inspection work from the agriculture and solid waste inspectors; institution of compliance assistance inspections; formalized neutral selection criteria; reevaluation of bio-security measures; reducing the backlog of manure management plans; automation of the inspection process; implementation of activity based timekeeping; and a consolidated database for confined feeding operations.

Electronic Waste - Michael Huber, Indiana Department of Administration (IDOA), presented a report concerning the state's electronic waste recycling efforts. The report addressed the following: the scope of IDOA's responsibilities; review of past testimony and actions; next steps in expanding the e-waste initiative; other surplus/recycling initiatives in development; the current

level of recycling of state owned and leased electronic equipment; and issues with the auctioning of equipment.

Michelle Cohen, Executive Director, Indiana Recycling Coalition, presented a report concerning e-scrap in Indiana. The report focused on the Indiana Recycling Coalition's e-scrap action program and addressed the following: the definition of e-scrap; the environmental problems caused by improper e-scrap disposal; the appropriate means of managing e-scrap; recommendations for state action; the Coalition's public education campaign; state hazardous waste statutes and rules; legislative actions in other states; and policy resources.

Environmental Legal Actions - Sean Riggs, Barnes & Thornburg, presented a report on the statute of limitations for Indiana environmental legal actions (ELA's). The report addressed the following: the need for statutory amendment to provide certainty and clarity with respect to the statute of limitations for ELA's; the inevitability of effects on pending litigation if the statute is amended; the negative effects likely to result if the statute is not amended; whether the General Assembly intended for the ELA to ever be time-barred before it even took effect; what event triggers the commencement of the statute of limitations on an ELA claim; and whether the statute of limitations should be six years or ten years. A written report from John Kyle, Barnes & Thornburg, addressed the following: a comparison of the purposes and cost contribution features of the ELA statute and the Indiana underground storage tank (UST) statute; case law that established a ten year statute of limitations for UST causes of action; proposed legislation in the 2007 session of the General Assembly to amend the statute of limitations for ELA's; and analyses of the proper statute of limitations and when the statute of limitations should begin to run.

John Keeler, Baker & Daniels, described the appeal involving ACF Industries pending in federal court concerning the statute of limitations for ELA's. Although he acknowledged the right of the Indiana General Assembly to set the limitation period, he expressed opposition to doing so retroactively. He is concerned that action by the General Assembly could have the effect of reversing the determination in the ACF Industries case. He also expressed concern about the effect of such action on environmental remediation insurance contracts.

A memorandum from George Plews, Jeff Featherstun, and Angela Dorrell, Plews Shadley Racher & Braun, distributed to council members recommends that the principle that governs the UST statute should govern the ELA statute and that the General Assembly should clarify the ELA limitation period to prevent further misapplication of the statute. The memorandum includes the recommended statutory amendment.

Sen. Gard stated that she has no interest in affecting the outcomes of cases of particular litigants, and is interested solely in providing a uniform statewide policy that encourages environmental remediation and requires responsible parties to pay.

Other Testimony - Glenn Pratt commented on the importance of integrating programs and expenditures for storm water runoff, combined sewer overflow issues, and septic system issues.

Dr. Rae Schnapp, Water Policy Director and Wabash Riverkeeper, Hoosier Environmental Council, commented that she understands that the inspection process for confined feeding operations focuses solely on the production area and not the land application area, and that the biggest potential for water quality impacts and spills occurs during land application. The Hoosier Environmental Council would like the manure management plan to be an enforceable part of the permit so that the land application practices would be subject to inspection.

Fifth Meeting - October 30, 2007

State Revolving Fund (SRF) Loan Programs - James McGoff, Director, Indiana Finance Authority Environmental Programs, presented a report concerning SRF loan programs. The report addressed the following: the SRF mission; the legislative and capitalization history of the program; the types of projects eligible for funding; the services provided by the programs to Indiana communities; a summary of loans by category; how interest rates are structured; examples of program successes; and program goals and accomplishments.

Indiana Brownfields Program - Mr. McGoff presented a report concerning the Indiana brownfields program. The report addressed the following: program services; financial incentives; financial assistance history of the program; project funding; examples of program successes; program assistance letters; program sites and technical staff; a budget update; the record of completion of 2005 commitments; 2007 fiscal year activity; and the fiscal year 2008 plan.

Legislative Recommendations

Thomas Easterly presented IDEM's recommendations for legislation in the 2008 session of the General Assembly, which include the following: amendments to the mercury switch removal program; eliminate the IDEM Office of Laboratory; transfer administration of the lead paint program from IDEM to the Indiana State Department of Health; amend the sunset provisions to require IDEM to give notice of all expiring environmental rules; allow electronic signatures on environmental compliance reports and permit applications; reduce work site posting requirements for wastewater operator certifications; require only one permit for septage haulers; delete from the good character law the requirement to submit Social Security numbers; and adopt a statute of limitations for claims on the underground petroleum storage tank excess liability trust fund and define allowable uses of the fund.

V. COUNCIL RECOMMENDATIONS

The following recommendations were approved by voice vote of a majority of the appointed members of the council:

Great Lakes Compact: The General Assembly should adopt the Great Lakes - St. Lawrence River Basin Water Resources Compact, and should work toward adoption of implementation language that sustains current and future development and provides a strong state role in

implementation.

Rulemaking:

(a) No recommendation is made to change the current estimated economic impact statement requirements in the environmental rulemaking process, but stakeholders in the process are encouraged to submit statements for consideration by the environmental rulemaking boards. IDEM, the State Budget Agency, and stakeholders in the process are encouraged to consult and to recommend improved methods for generation of estimated economic impact statements and consideration of the statements in the process.

(b) In the sunset process, IDEM should be required to list both the rules the agency wants to be readopted and those the agency wants to expire.

(c) IDEM should propose an expedited environmental rulemaking process to address noncontroversial rules that are not covered under current law.

Recycling: The General Assembly should permit IDEM to use the solid waste management fund to promote beneficial uses of waste to energy technologies with priority given to waste tires.

Environmental Legal Actions: The General Assembly should adopt a ten year statute of limitations on environmental legal action claims that begins to run when environmental clean up costs are first incurred.

Storm Water: The General Assembly should provide that two jurisdictions proposing to implement storm water fees in the same geographic area must negotiate to adopt a memorandum of understanding (MOU) that gives only one of the jurisdictions authority to impose fees and manage storm water. If they fail to produce a MOU within six months, neither jurisdiction should be permitted to impose storm water fees in the area until they agree on a MOU.

Confined Feeding: The General Assembly should adopt the confined feeding good character disclosure and enforcement requirements contained in SB 431-2007, amended to allow IDEM to consider a permit applicant's compliance history outside the United States.

Electronic Waste: The state should expand its electronic waste recycling program to include all classifications of electronic waste and all state facilities.

WITNESS LIST

Cindy Adams, Covanta
Nelson Becker
Dr. William Beranek, Indiana Environmental Institute
Michelle Cohen, Indiana Recycling Coalition
Miriam Dant
Kari Evans, Office of Governor Mitch Daniels
Elizabeth DuSold, Eli Lilly and Company
Thomas Easterly, IDEM
Karen Firestone, Indiana Legislative Services Agency
Sandra Flum, IDEM
Vince Griffin, Indiana State Chamber of Commerce
Carey Hamilton, Indiana Recycling Coalition
Lance Hodge
Michael Huber, Indiana Department of Administration
Peter Johnson, Council of Great Lakes Governors
Dr. Daland Juberg, Dow AgroSciences LLC
John Keeler, Baker & Daniels
Nancy King, IDEM
David Lamm, Boone County Solid Waste Management District
Dr. Greg Lindsey, School of Public and Environmental Affairs
Janet McCabe, Improving Kids' Environment
Michael McCabe, Council of State Governments, Midwestern Region
James McGoff, Indiana Finance Authority
Douglas McGregor, Steel Dynamics, Inc.
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